



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG

Docket No: 2390-00

16 October 2000

CAPT [REDACTED] USMCR
[REDACTED]

Dear Captain [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested that the fitness reports for 30 March to 30 May 1991, 31 May to 30 June 1991 and 1 July to 27 December 1991 be modified by removing the section B marks; that the report for 8 January to 9 February 1988 be modified by removing the section C narrative; and that the reports for 1 September 1998 to 31 January 1999 and 1 February to 28 March 1999 be modified by removing sections F, G, and H. You also impliedly requested that the report for 5 February to 29 March 1991 be changed to show you were ranked first rather than second among your peers because, you allege, someone changed your ranking from one to two; that you be awarded the Navy Achievement Medal (NAM) you allege to have been recommended for during this period; and that a letter of appreciation you allege to have received on 7 February 1990 be filed in your record. You further impliedly requested setting aside action to effect your discharge from the Marine Corps Reserve on 1 December 2000 by reason of your two failures of selection to major. Finally, you requested that your reserve retirement points be restructured to make your anniversary year ending 4 March 1995 a satisfactory year for purposes of eligibility for reserve retired pay.

Your requests regarding the NAM and letter of appreciation were not considered, as you have not exhausted your administrative remedies. You may submit these requests to Headquarters Marine Corps (HQMC).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the HQMC Performance Evaluation Review Board (PERB) in your

case, dated 3 April 2000, and the advisory opinions from the HQMC Career Management Branch, Reserve Affairs Division (RAM), dated 8 May and 10 August 2000, and the HQMC Separation and Retirement Branch, dated 6 October 2000 with enclosure, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board substantially concurred with the comments contained in the report of the PERB in finding that the requested corrections of your fitness report record were not warranted. They were unable to find your ranking in the report for 5 February to 29 March 1991 was incorrect, noting that you provided nothing to support your own statement that someone changed your ranking from one to two. Regarding the contested reports for 30 March to 30 May 1991, 31 May to 30 June 1991, 1 July to 27 December 1991 and 8 January to 9 February 1998, they did not find the marks and comments to be inconsistent. Specifically concerning the report for 8 January to 9 February 1998, they noted that you may ask HQMC to correct the entry showing your height as 56 inches.

Notwithstanding the favorable advisory opinion dated 6 October 2000, the Board found no error or injustice in your reserve retirement point credit. They felt your active participation in other years did not warrant correction of your credit for the year in question.

The Board found your failures by the Fiscal Year 2000 and 2001 Reserve Major Selection Boards should stand. They noted that you could have taken action to ensure that the selection boards were aware of information about your commendations, and you could have acted to have your fitness report for 8 January to 9 February 1998 reflect your height accurately. Further, they found that these matters would have had no appreciable impact on your chances for selection.

Since the Board found insufficient grounds to remove your failures of selection for promotion, they had no basis to set aside action to effect your discharge from the Marine Corps Reserve on 1 December 2000.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



2390-00

D. PARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
13 APR 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMCR

Ref: (a) Captain [REDACTED] DD Form 149 of 2 Feb 00
(b) MCO P1610.7C w/Ch 1-5
(c) MCO P1610.7D w/Ch 1-4
(d) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 March 2000 to consider Captain [REDACTED]'s petition contained in reference (a). In evaluating the application, we have determined that action, as indicated, was requested on the following fitness reports:

a. Report A - 910330 to 910530 (GC) -- Removal of Section B marks. Reference (b) applies.

b. Report B - 910531 to 910630 (SA) -- Removal of Section B marks. Reference (b) applies.

c. Report C - 910701 to 911227 (TR) -- Removal of Section B marks. Reference (b) applies.

d. Report D - 980108 to 980209 (EN) -- Removal of Section C. Reference (c) applies.

e. Report E - 980901 to 990131 (AR) -- Removal of Sections F, G, and H. Reference (d) applies.

f. Report F - 990201 to 990328 (CS) -- Removal of Sections F, G, and H. Reference (d) applies.

2. In the case of each challenged report, the petitioner provides his insight as to why he believes the marks/comments are unfair or incorrect. Likewise, he asks for the removal of certain portions of selected reports since, in his opinion, they are not adverse but sufficient enough to affect his career. Other than his own statement, the petitioner has provided no documentary or material evidence to support his appeal.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMCR

3. In its proceedings, the PERB concluded that all six reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the Board stresses that it cannot and does not operate under the premise that administratively correct, procedurally complete, and factually accurate fitness reports should be altered or removed simply to enhance competitiveness. To do so would breach the integrity and viability of the entire performance evaluation system. It is most unfortunate that the petitioner has been misinformed as to what constitutes a basis for removal of fitness reports.

b. Notwithstanding the petitioner's objections and statements concerning the fitness reports at issue, the Board finds nothing to prove they are somehow inaccurate or unfair. In this regard, the Board concludes that the petitioner has failed to meet the burden of proof necessary to establish the existence of either an error or an injustice.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports, as configured, should remain a part of Captain [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

2390-00

IN REPLY REFER TO:

1610
RAM
8 May 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF CAP [REDACTED]
[REDACTED] USMCR

Ref: (a) MMER Request for Advisory Opinion in the case of
Captain [REDACTED] 0135 USMCR

1. Recommend disapproval of Captain [REDACTED]'s request for
removal of failure of selection.

2. We have reviewed Captain [REDACTED] record and offer the
following opinion regarding his request for removal of failure of
selection. Captain [REDACTED] petitioned the Performance
Evaluation Review Board (PERB) for removal of Section B marks and
Section C comments from a total of six (6) fitness reports. The
PERB decided that the contested reports should remain in Captain
[REDACTED] record. As there was no change made to Captain
[REDACTED] record, there are no grounds for removal of
failure of selection. Therefore, it is recommended that Captain
[REDACTED] request be disapproved.

34. Point of contact regarding this matter is the undersigned at
(702) [REDACTED]

[REDACTED]

Major, U.S. Marine Corps
Assistant Head,
Career Management Branch
Reserve Affairs Division

2390-00



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1610
RAM
10 Aug 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: PCNR APPLICATION IN THE CASE OF CAPTAIN [REDACTED]
[REDACTED] SMCR

Ref: (a) MMER Request for Advisory Opinion in the case of
Capt [REDACTED] CR

1. Recommend disapproval of Captain [REDACTED]'s request for
removal of failure of selection.

2. We have reviewed Captain [REDACTED]'s record and offer the
following opinion regarding his request for removal of failure of
selection. Our opinion remains the same as that submitted on 8
May 00. The PERB decided that the contested reports should
remain in Captain [REDACTED]'s record. As there was no change
made to Captain [REDACTED]'s record, there are no grounds for
removal of failure of selection. Therefore, it is recommended
that Captain [REDACTED]'s request be disapproved.

3. Point of contact regarding this matter is the undersigned at
(703) 784-9130

[REDACTED]

[REDACTED] Colonel, U.S. Marine Corps
Assistant Head,
Career Management Branch
Reserve Affairs Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1740
MMSR-6J
6 Oct 00

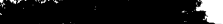
MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED] USMCR

Ref: (a) MMER Route Sheet of 22Sep00, Docket No. 2390-00

Encl: (1) MMSR-5 Comment 1800 MMSR-5J of 30Oct00

1. The reference is seeking an advisory opinion on Captain [REDACTED] petition to correct his record to reflect a restructuring of his Reserve Retirement points in any way that would provide him with "more good years.."
2. As explained in the enclosure, this Branch would support a transfer of three nonpaid Inactive Duty Training (IDT) points from anniversary year ending 4 March 1998 to anniversary year ending 4 March 1995.


 New Separation and
 Retirement Branch
 By direction of the Commandant
 of the Marine Corps

1800
MMSR-5J
3 Oct 00

MMSR-5 COMMENT on MMER Route Sheet of 22 Sep 00

Subj: ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMCR

Ref: (a) Chairman, Board for Correction of Naval Records
Ltr Docket No: 2390-00 OF 19 Sep 2000

1. We have reviewed the reference and provide the following comments:

a. Captain [REDACTED] request to restructure his Reserve Retirement points in any way that would provide him with "more good years" is somewhat vague in comparison to similar requests we have dealt with in this Branch.

b. The circumstances surrounding Captain [REDACTED] request do not fit the "classic" example of a conflict between fiscal year training requirements and anniversary year drill accounting. The conflict in certain situations results in a member being unfairly accessed with a non-qualifying year, which could impact on his retirement eligibility.

c. In Captain [REDACTED] case, he has only recently started participating at a level that would ensure a qualifying year of federal service. Restructuring Reserve Retirement points from the four years where he earned no points except for the fifteen gratuitous membership points is a course of action we would not recommend.

d. Captain [REDACTED] did, however, give freely of his time in an important assignment outlined in the reference during the anniversary year 5 March 1997 - 4 March 1998. Captain [REDACTED] performed thirty-three Inactive Duty Training (IDT) periods without compensation. Captain [REDACTED]'s efforts as a translator were highly praised by his Reporting Senior who commented on how unfortunate it was that the captain was not able to continue to participate due to frequent job conflicts.

2. We recommend the following:

a. The Board for Correction of Naval Records (BCNR) direct Headquarters Marine Corps (MMSR-5) to transfer three non-paid IDT Reserve Retirement points from the anniversary year 5 March 1997 - 4 March 1998 to anniversary year 5 March 1994 - 4 March 1995.

b. The result of this action would provide Captain [REDACTED] with nine vice eight qualifying years of federal service.

Subj: ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] MCR

3. If you have any questions please call Master Gunnery Sergeant
Hump [REDACTED]

[REDACTED]

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|------------------------|----------------------|
| PERM GR CAPT | PERM DOR 19910531 |
| REMARKS & OBSERVATIONS | |
| LANGUAGES | |
| TP TP | |